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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

AZIN MORTAZAVI,)	
)	No. C 07-3768 SI
Plaintiff,)	
)	
v.)	
)	ANSWER
ROSEMARY MELVILLE, District Director)	
USCIS San Francisco District Office;)	
EMILIO T. GONZALEZ, Director, USCIS;)	
MICHAEL CHERTOFF, Secretary,)	
Department of Homeland Security;)	
PETER D. KEISLER, Attorney General,)	
Department of Justice)	
)	
Defendants.)	

The Defendants hereby submit their answer to Plaintiff's Complaint for Mandamus.

I. INTRODUCTION

The initial paragraph consists of Plaintiff's characterization of this action for which no answer is necessary.

II. PARTIES

1. Defendants admit the allegations in Paragraph One.
2. Defendants admit the allegations in Paragraph Two.
3. Defendants admit the allegations in Paragraph Three.
4. Defendants admit the allegations in Paragraph Four.

ANSWER
 C07-2768 SI

1 5. Defendants admit the allegations in Paragraph Five regarding the duties of the Attorney General.
2 Defendants aver that Peter D. Keisler is now the Attorney General.

3 **III. JURISDICTION**

4 6. Paragraph Six consists of Plaintiff's allegations regarding jurisdiction, to which no responsive
5 pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants
6 deny that this Court has jurisdiction under any of the provisions cited in Paragraph Six.

7 7. Paragraph Seven consists of Plaintiff's allegations regarding jurisdiction, to which no responsive
8 pleading is required.

9 8. Paragraph Eight consists of Plaintiff's allegations regarding jurisdiction, to which no responsive
10 pleading is required.

11 9. Paragraph Nine consists of Plaintiff's request for costs and fees, to which no responsive pleading
12 is required;

13 **IV. VENUE**

14 10. Paragraph Ten consists of Plaintiffs' allegations regarding venue, to which no responsive
15 pleading is required. Defendants aver that unless specifically provided by law, aliens have no
16 residence in the United States for venue purposes. To the extent a response is required, Defendants
17 deny that venue is proper in this district.

18 **V. EXHAUSTION OF REMEDIES**

19 11. Defendants deny that Plaintiff has exhausted her administrative remedies.

20 **VI. REMEDY SOUGHT**

21 12. Paragraph Twelve consists of Plaintiff's prayer for relief, to which no admission or denial is
22 required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

23 **VII. STATEMENT OF FACTS**

24 13. Defendants admit the allegations in Paragraph Thirteen.

25 14. Defendants admit the allegations in Paragraph Fourteen.

26 15. Defendants admit the allegations in Paragraph Fifteen.

27 16. Defendants are without sufficient information to admit or deny the allegations in Paragraph
28 Sixteen, and on that basis, deny them.

17. Defendants admit the allegations in Paragraph Seventeen.

18. Defendants admit the allegations in Paragraph Eighteen.

19. Defendants admit the allegations in Paragraph Nineteen.

20. Defendants admit that Plaintiff's fingerprints were taken on February 17, 2006, May 9, 2006, June 17, 2006 and July 20, 2006. The Plaintiff had her biometrics completed on February 22, 2007 for her EAD application.

21. Defendants admit the allegations in Paragraph Twenty-One. The case is also continued for National Security Entry-Exit Registration System ("NSEERS") registration.

22. Defendants admit the first sentence and deny the second sentence in Paragraph Twenty-Two.

VIII. CAUSE OF ACTION

23. Defendants admit the application processing is not complete.

24. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty-Four.

25. Defendants deny the allegations in Paragraph Twenty-Five.

26. The allegations contained in Paragraph Twenty-Six consists of Plaintiff's conclusions of law for which no answer is necessary. To the extent a responsive pleading is deemed necessary, Defendants deny the allegations, but aver that "sense of Congress" provisions are precatory, and create no right or binding law.

27. The allegations contained in Paragraph Twenty-Seven consists of Plaintiff's characterizations of the law for which no answer is necessary.

28. Defendants deny the allegations in Paragraph Twenty-Eight.

29. Defendants admit that Plaintiff may apply for employment authorization and advance parole and the dates of her current authorization and parole; however, Defendants deny the remaining allegations.

30. Defendants admit the fee increase, however, Defendants deny the remaining allegations.

31. Defendants deny the allegations in Paragraph Thirty-One.

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VI. PRAYER

32. Paragraph Thirty-Two of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified are hereby denied. For further and separate answer, Defendants allege as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action

SECOND DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

FOURTH DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH DEFENSE

The Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

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1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's Complaint
3 with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems just
4 and proper under the circumstances.

5 Dated: September 28, 2007

Respectfully submitted,

6 SCOTT N. SCHOOLS
7 United States Attorney

8 /s/
9 MELANIE L. PROCTOR
Assistant United States Attorney
Attorneys for Defendants